

**UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MICHIGAN
CIVIL DIVISION**

ELIZABETH CALDWELL, individually
And as Personal Representative of the
ESTATE OF ROBERT PATRICK CALDWELL,
Deceased,

Plaintiffs,

vs.

File No. 2009-13828

CHEAPCARIBBEAN.COM, INC.,
INTER ISLAND TOURS, LTD,
COMM GROUP, INC., GLOBAL
INCENTIVE & MEETING MANAGEMENT,
SA DE CV, BEACON HOSPITALITY
MANAGEMENT, L.L.C., BEACON
INVESTMENT, L.L.C., GLOBAL MEETINGS
& INCENTIVES, INC., GLOBAL MEETINGS
& INCENTIVE ALLIANCE, L.L.C.,
ARMANDO ROY ORTIZ, and
PEDRO GUIVARI CASTRO,
Jointly and Severally,

HON. STEPHEN J. MURPHY, III

Defendants.

_____/

GLENN D. STEEG (P34264)
MARTIN GLISTA (P28366)
Steeg & Glista, P.C.
Attorneys for Plaintiff
6011 Stadium Drive
P.O. Box 328
Oshtemo, MI 49077
(269)375-6224
martin@martinglista.com

PETER M. KELLETT (P34345)
KYLE R. DUFRANE (P58809)
ROBERT HUGH ELLIS (P72320)
Dykema Gossett, PLLC
Attorneys for Defendant
CheapCaribbean.com, Inc., Inter Island
Tours, Ltd., and COMM Group, Inc.
400 Renaissance Center
Detroit, MI 48243
(313) 568-6800
pkellett@dykema.com
kdufrane@dykema.com
rellis@kykema.com

_____/

**PLAINTIFF'S SUPPLEMENTAL REPLY TO DEFENDANTS' MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION AND IMPROPER VENUE**

A. Defendants Comm Group Inc. and Inter Island Tours, Inc. may not be granted summary disposition without discovery taking place and a proper motion being filed

Plaintiff was taken by surprise at the hearing held May 18, 2010 as Defendants argued, and the Court appeared to consider, granting dismissal to Defendants Comm Group Inc. and Inter Island Tours Inc. regardless of the outcome of the motion to dismiss for lack of jurisdiction over Defendant Cheapcaribbean.com Inc. Finding for the Defendants on this issue would require the court to make findings of fact, and without a trial and without discovery, make a determination that paragraph 2 of the Second Amended Complaint was not true.

Documents created by and for Defendants exist which prove these three corporations were treated as a single entity by their owners and officers. Attached as Exhibit (4) is a Certificate of Insurance which covers all three corporations at the time of this occurrence. Attached as Exhibit (5) are financial statements prepared by Defendants' accountants prior to the casualty which is the subject of this complaint, which consolidate the three companies' income and outgo to reflect the reality: Cheapcaribbean.com Inc., InterIsland Tours, Inc. and Comm Group, Inc. were convenient corporate shells for a single closely-held business.

Only after the tragic deaths and injuries occurred on October 1, 2007 did the three corporation's owners seek to separate them in some formal fashion. Without discovery, summary disposition must not be granted if the court finds jurisdiction over Cheapcaribbean.com.

B. The reference to the decision by Judge Rosen at oral argument was mis-named by Plaintiff's Counsel

During oral argument, the Court mentioned a decision by Judge Rosen as standing for the proposition that more than simply advertising on the web must be shown to create a presence in Michigan sufficient to impose jurisdiction. I incorrectly named that case as *National Association*

of Home Inspectors v. National Association of Certified Home Inspectors, 06-cv-1957 (October 31, 2006). That decision was actually issued by Judge Borman in the Eastern District of Michigan, and also found jurisdiction in favor of the Plaintiff where there was an interactive web site and 3% of defendant's members were Michigan residents.

The correct identification of the case decided by Judge Rosen was *Dedvukaj v. Maloney*, et al., 447 F. Supp. 2d 813 (US Dist. Court, ED Michigan, Southern Div. 2006). Judge Rosen found personal jurisdiction over a company which advertised on eBay, and thus did not even create its own web site. The plaintiff Mr. Dedvukaj did not send money through the web site, but in fact mailed a check to the seller.

Similarly, this Honorable Court found in *Zen Design Group Inc. v. Clint*, Case No. 08-cv-14309. (ED Mich, November 23, 2009) sufficient contact with Michigan to impose jurisdiction by reason of the Defendant posting a product for sale on Ebay, and defaulting as to the allegations of the complaint concerning active business conduct with Michigan residents.

All three of these Eastern District of Michigan cases found jurisdiction over the internet advertisers. In the case at bar, we contend the interaction occurred when Plaintiff, in Michigan, affirmatively called the toll-free phone number of Defendant Cheapcaribbean Inc. and booked the vacation package with all defendants, paying for the offered transaction by reading her credit card number to the Defendants' agent. Defendants then confirmed the reservation through an e-mail to Plaintiff. Defendant did not, in the phone conversation, attempt to obtain Plaintiff's consent to Bucks County, Pennsylvania as the venue for resolution of disputes, and Plaintiff never clicked on that clause on the web site.

Conclusion

For these reasons, we again ask the motion to dismiss be denied.

Respectfully submitted,

Date: May 19, 2010

By: /s/ Martin D. Glista
MARTIN D. GLISTA (P28366)
GLENN D. STEEG (P34264)
Steeg & Glista, P.C.
Attorneys for Plaintiff
6011 Stadium Drive
P.O. Box 328
Oshtemo, MI 49077
(269) 375-6224
martin@martinglista.com

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2010, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to counsel of record.

Respectfully submitted,

Date: May 19, 2010

By: /s/ Martin D. Glista
MARTIN D. GLISTA (P28366)
GLENN D. STEEG (P34264)
Steeg & Glista, P.C.
Attorneys for Plaintiff
6011 Stadium Drive
P.O. Box 328
Oshtemo, MI 49077
(269) 375-6224
martin@martinglista.com